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STATE FOR EB/IFD/OIA (HEATHER GOERTHER) AND L/CID (SAM MCDONALD)

E.O. 12958: N/A

TAGS: CASC PGOV EINV KIDE UZ

SUBJECT: 2007 REPORT ON INVESTMENT DISPUTES AND EXPROPRIATION CASES: EMBASSY TASHKENT SUBMISSION

REF: STATE 55422

¶1. The United States Government is aware of fifteen (15) claims of United States persons against the Government of Uzbekistan, seven (7) of which have been resolved.

¶2. a. Claimant B

b. 1998

c. Claimant B is a US trading company that exported alcohol to Uzbekistan. In 1998, customs authorities seized Claimant B's shipment of ethyl alcohol after a Presidential decree changed the requirements for permissible imports of ethyl alcohol. At the time of seizure, the shipment was not destined for Uzbekistan. Claimant B had redirected it to Tajikistan and Kyrgyzstan after the decree was announced, but it was seized while transiting Uzbekistan. Although the shipment was already in the country before the decree took effect, customs agents seized it for failing to comply with the new rules. Claimant B's shipment was worth approximately \$500,000. Claimant B's legal representative in Uzbekistan was unable to convince the Prosecutor's Office to take action in the case. To date, Claimant B remains uncompensated for the seizure. Post last had contact with Claimant B in 2000. Claimant shortly thereafter voluntarily abandoned resolving case.

¶3. a. Claimant D

b. 2002

c. An American trading company based in New Jersey, was the chief operator of a soft drink manufacturing plant in Uzbekistan since independence in 1991. However, Claimant D alleges that following a personal dispute between one of the owners of Claimant D and the daughter of a high official of the Government, Claimant D executives were all forced to leave the country and have not been allowed to return or to conduct business in Uzbekistan. Following prolonged proceedings in the Tashkent Economic Court and Supreme Court, Claimant D's shares were reduced, making a large U.S. soft drink corporation the major shareholder and operator of the bottling plant rather than Claimant D. In addition, the GOU confiscated many assets of Claimant D, including 600,000 tons of sugar, 120 cars, and 70 computers. Moreover, they confiscated the Scegeli wholesale supermarket, which had been a large investment of Claimant D. The GOU has explained these confiscations as the result of convictions for tax violations. Finally, a number of employees of Claimant D were arrested. The US Government has made representations to the GOU to ensure fair treatment for Claimant D. Claimant D's commercial dispute has been overshadowed by personal

events resulting from his relationship with high-level government officials. Post's last contact with Claimant D was in 2003. Claimant D abandoned the case and left Uzbekistan.

¶4. a. Claimant F (resolved)

b. 2001

c. Claimant F has been in Uzbekistan since 1997. The company's investment is partially funded by the World Bank. The Seed Law of Uzbekistan guaranteed it the right to export its product, but since 1999 it has been forced to surrender all or part of its hard currency earnings for exchange to soum at the official rate. In addition, Customs officials have often detained cotton export shipments and disregarded agreements reached under the Seed Law of Uzbekistan. The GOU has reduced the acreage Claimant F is allowed to plant in high-yield seed varieties from just over 10,000 hectares in 1999, to 8,000 hectares in 2001 and then to 5,700 hectares in ¶2003. Local GOU authorities are interfering in the management of Claimant F's farms by keeping farmers under state production plans, even though the original business plan, approved by the GOU, states the company's farms are exempt from state orders.

Claimant F is responsible for repayment on loans totaling roughly \$17 million. This includes \$10 million to the World Bank and Ministry of Finance. The remaining \$7 million debt is held by a private bank, which is now demanding payment on the principal. However, as a result of the aforementioned problems, Claimant F has only been able to pay interest on the \$7 million loan. Continued obstruction by the GOU will lead to the financial collapse of Claimant F.

The Embassy successfully utilized the visit of US Senator Shelby in January 2002 to force the GOU to focus on a resolution of problems for Claimant F. The Embassy arranged a meeting between Senator Shelby and Elyor Ganiev, Deputy Prime Minister for the Agency for Foreign Economic Relations. Claimant F's Managing Director and Ganiev also met to determine a way for Claimant F to pay back the \$4.3 million it owes to an Alabama bank. The US Government has advocated as appropriate on behalf of Claimant F, and the claimant has been able to repay the Alabama bank and continue its cotton project. Also, the surrender requirement is not the punishment it once was, as the unification of currency rates has diminished the negative impact of this requirement. Through US Government engagement, Claimant F was able to negotiate additional cotton acreage to use in its business and continue payment on its outstanding loan.

In May 2005 the Government of Uzbekistan sent a team of inspectors, headed by the National Security Service, to investigate Claimant F's company. Despite the inability of the first team of investigators to find any possible charges, the inspection continues. The inspection team has told Claimant F that they have been instructed to find criminal wrongdoing, even if none exists. This renewed interest in Claimant F stems from the familial ties of his local partner to Uzbek opposition politicians.

The Embassy sent a letter on Claimant F's behalf requesting a meeting with GOU officials. In addition, Embassy officers were sent as observers during the National Security Service Investigation to make clear that we believe this investigation is against Uzbek law. In June 2005, the Prosecutor's Office brought criminal charges against the company, freezing its operations and accounts. The GOU physically blocked the factory from receiving raw cotton. However, in early 2006, Claimant F's fortunes turned when they merged with a local company. While some problems continue, the situation seems to have improved. Post continues to monitor the situation and has regular contact with Claimant F.

¶5. a. Claimant H (resolved)

b. 2002

c. Claimant H is a large American oil and gas company that had a dispute with the GOU involving a road tax which resulted in the GOU tax committee freezing Claimant H's bank account for approximately six weeks. The Ambassador met with Prime Minister Sultanov to resolve this dispute as well as other disputes involving Claimant H's joint venture partner, the state-owned oil and gas company.

Claimant H was also involved in a tax dispute regarding the enactment of new legislation that contradicts previous agreements for a permanent tax holiday. Claimant H's tax disputes were resolved; however, a new dispute has arisen concerning the amount of inputs required under the contract agreement. Since 2003, the GOU has not fulfilled the agreement with claimant H concerning the amount of inputs required to make refined petroleum products.

The claimant has recently renegotiated the agreement with the GOU, and in March 2005, the claimant's JV began receiving the proper inputs for the first time in several years. However, these inputs are delayed each month by two weeks. This dispute was resolved in 2004.

¶ 6. a. Claimant J

b. 2002

c. Claimant J provided agriculture chemicals to the GOU in 2001 in accordance with a government-issued tender in the amount of \$340,000. However, claimant J has never been paid for the products. In February 2003, the Ambassador sent a letter to PM Sultanov regarding this case. In 2004, the US Government pressed this issue with the GOU, by approaching high-level GOU officials and again asking for payment. The Embassy continues to push the GOU regarding outstanding payment and have pointed out on numerous occasions, that if the Uzbeks do not resolve this issue other companies will not invest in the agricultural sector. Assistant Secretary of Commerce William Lash III raised Claimant J's dispute with Deputy Prime Minister Rustam Azimov in November 2004, advising the DPM that refusing to meet commercial obligations will lead other businesses to avoid Uzbekistan. Payment has yet to be rendered. Last contact with Claimant J was in

¶ 2005.

¶ 7. a. Claimant K

b. 2003

c. Similar to the issue faced by Claimant J, Claimant K provided agricultural chemicals to the GOU in 2001 in the amount of \$245,000 and has not been paid to date. In February 2003, the Ambassador sent a letter to PM Sultanov regarding this case. In 2004, the US Government pressed this issue with the GOU, most recently, by approaching high-level GOU officials and again asking for payment. The Embassy has raised this issue with GOU officials, pointing out that it hampers their ability to attract investment to the agricultural sector. Assistant Secretary of Commerce William Lash III raised Claimant J's dispute with Deputy Prime Minister Rustam Azimov in November 2004, advising the DPM that refusing to meet commercial obligations will lead other businesses to avoid Uzbekistan. Payment has yet to be rendered. Last contact with Claimant J was in 2004.

¶ 8. a. Claimant L (resolved)

b. 1999

c. Claimant L, an American firm previously involved in a joint venture with an Uzbek company, contributed equipment to build an ice-cream plant in Samarkand. After a conflict with the Uzbek partner and an unsuccessful attempt to retrieve their equipment from the plant, an Uzbek regional court ruled in favor of Claimant L. However, the GOU is not enforcing

the ruling. To date, claimant L has not received its equipment and in February 2003, the Ambassador wrote a letter to PM Sultanov regarding this case, requesting support from the GOU in enforcing the ruling. Claimant L has dropped its interest in the case and left follow-up to its former local partner. This claim is resolved. Post last had contact with Claimant L in 2004

¶9. a. Claimant M

b. 2003

c. Claimant M purchased 51 percent of shares in an Uzbek fruit processing plant in May 2002 from the GOU state property committee. Claimant M made an initial investment payment of approximately \$30,000 in June 2002 and a second payment of approximately \$54,000 in October 2002. In November 2002, GKI returned claimant K's second payment and declared that they had cancelled the contract.

Because the Tashkent Court found in favor of GKI following appeals by claimant K, the claimant will lose its initial investment. The claimant finds no reason for GKI to cancel the contract and believes that its contract was cancelled so that GKI could alternatively sell the plant to the Russian company "UGMK AGRO".

Separately, claimant K is involved in a JV having purchased 33.3 percent of the shares of another American company. Due to a privatization decree, the GOU is now selling the government's portion of the venture, including the property on which the company operates. Claimant K has offered to purchase the building with a purchasing price based on previous investments. However, the GKI is requesting double the amount of the independently assessed value of the building at \$208,000.

In April 2003, the Ambassador sent a letter to PM Sultanov requesting that his staff investigate this issue. The company has since partially resolved some issues, but continues to battle the GOU. Post's last contact with the Claimant was in 2005.

¶10. a. Claimant N (resolved)

b. 2003

c. The company has been working in Uzbekistan since 1995 as consulting engineers designing water supply projects and supervising the construction of the projects near the Aral Sea. Claimant N has not received payments for ongoing contract services from the GOU since June 2002. In late 2003, the Ministry of Economy signed extensions on their contract, but the company has been waiting since December 2003 for the registration of their contract with the Agency for Foreign Economic Relations. The government of Uzbekistan currently owes the company over \$400,000.

In early 2005, the GOU agreed to begin payment to claimant N on a monthly basis for contractual arrears in return for claimant N finishing the project. Ongoing contracts have also been signed for 2005. During his visit in November 2004, Assistant Secretary of Commerce William Lash pushed Deputy Prime Minister Azimov on this outstanding case, encouraging quick payment to resolve a commercial dispute that continues to diminish Uzbekistan's commercial reputation. This dispute was resolved in 2005.

¶11. a. Claimant O (resolved)

b. 2003

c. Claimant O received a contract to complete consulting services on the GOU-financed Shurtan Gas Chemical Complex. More than a year after completing their services, the claimant has still not been paid a sum of over \$7.4 million. The company renegotiated with the GOU to invoice them on a

monthly basis at approximately \$400,000 per month. More than three years after completing their services, the Claimant was paid the last amount on January 5, 2007.

¶12. a. Claimant P (resolved)

b. 2003

c. Claimant P is a joint venture that was established in 1994 and provides paging services in Uzbekistan. In 2003 the company applied for an ISP (internet service provider) license. However, the Uzbek Agency for Communication and Information refused to issue a license and permission for an international Internet channel. The GOU wants to keep an exclusive monopoly of international Internet channels for state-owned UzbekTelekom. In the end, Claimant P decided to sign a contract with UzbekTelekom to use their services in order to continue operations. This dispute has been resolved and will be omitted from next year's report barring new developments.

¶13. a. Claimant Q (resolved)

b. 2004

c. Claimant Q purchased shares of an Uzbek telecom joint venture in 2004 worth over \$17 million. In late December 2004, the GOU told claimant Q that it could no longer operate cellular services in Tashkent, the company's primary market. In March 2005, the government shut down the company's frequencies, ending Claimant Q's operations in total. The GOU claimed that the frequency was shut down due to technical problems. The only alternative presented to Claimant Q by the government was to allow the GOU to buy back the company's equipment at an extremely discounted rate - about \$9 million. The Ambassador raised this issue throughout with numerous government officials, including in a letter and conversations with Deputy Prime Minister Azimov. This dispute was resolved in 2005.

¶14. a. Claimant R

b. 1996

c. Claimant R entered into a written contract with a state-owned enterprise to deliver 50,000 metric tons of Kazakh wheat. The wheat was delivered, but the Uzbek party never remitted payment. Despite repeated attempts by Claimant R and the US Government on its behalf, payment was not forthcoming. In 1997, Claimant R, a Swiss company with a US subsidiary, brought their case to the Grain and Feed Trade Association (GFTA) under an arbitration proceeding required by the written contract controlling the grain purchase. GFTA ruled on this matter, and order the Uzbek enterprise to pay Claimant R for the value of the shipment plus interest. An appeal of this ruling was denied in July 1998. The Uzbek side now owes Claimant R approximately \$18 million. The Embassy continues to receive correspondence on this issue and the Ambassador has raised it with government officials up to and including the Deputy Prime Minister. Post last had contact with Claimant R in 2004.

¶15. a. Claimant S

b. 2006

c. From March 2006 to August 2006, Claimant S was under

increasing pressure from the Government of Uzbekistan, resulting in the de facto expropriation of the company and its departure from Uzbekistan. During this time, Claimant S suffered repeated audits, removal of its beneficial tax status, a fine of \$60 million for alleged non-payment of back taxes, a government declaration of bankruptcy, and media criticism for damaging the environment. Additionally, the government revoked the presidential decree establishing the

joint venture, resulting in the loss of Claimant S's benefits, including protection from new taxes and regulations adopted after the initial investment.

Claimant S has filed for arbitration with two organizations: the World Bank's International Center for Settlement of Investment Disputes and the Stockholm Chamber of Commerce Court. The Uzbek Constitutional Court ruled on November 20, 2006, that Uzbek law, as written, does not presume the consent of all parties to international arbitration. Under the reinterpretation of the law, the Uzbek justice system will not recognize the attempts of foreign businesses to seek international arbitration without the written consent of all involved parties, separate of a contract. Claimant S's contract with the local partners provides for international arbitration in Stockholm. While Post continues to monitor the dispute, Claimant S is no longer in Uzbekistan.

¶16. a. Claimant T

b. 2006

c. Claimant T, a leading mobile communications provider, was formed in 1996 as a U.S.-Uzbek joint venture. In 2000, the U.S. partner purchased the Uzbek Government's share of the venture. In late 2006, the U.S. partner entered negotiations aimed at selling its stake in Claimant T to a Qatari firm. The Uzbekistan Agency for Telecommunications and Information Technology (the Telecom Agency) pressured the U.S. partner to sell the firm instead to a Russian investor, an option which the U.S. partner rejected.

The Telecom Agency proceeded to employ a series of legal and regulatory measures against Claimant T. In 2006, the state tax authority sued Claimant T for allegedly evading taxes on income from international roaming charges, the charge was resolved in Claimant T's favor in Uzbek courts. The Telecom Agency repeatedly denied approval for Claimant T to establish transmission stations to expand its service network. The Agency sued Claimant T alleging that the firm illegally changed its name, and that the U.S. partner in 2000 illegally purchased the Uzbek Government's share of the firm for a price far below fair market value.

After a two-hour service outage across much of Claimant T's network in January 2007 caused by a power surge, the Telecom Agency suspended Claimant T's operations for 10 days. After the suspension ended, the agency only permitted restoration of service gradually over a two month period. The service interruption led to a substantial loss of customers. The Department raised the issue with the Uzbek Embassy in Washington, and the Embassy raised it with the Foreign Ministry in Tashkent. South Central Asian Deputy Assistant Secretary Evan Feigenbaum raised it in Tashkent with Telecom

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Agency Chairman Abdulla Aripov in March 2007. Subsequently, the U.S. partner entered into talks with a Turkey-based investor on the possible sale of Claimant T. The Uzbek Government signaled its preliminary approval of the sale, and Claimant T has since noted no irregularities in its relations with the government. The Embassy continues to have periodic contact with Claimant T and continues to follow its case.

¶17. None of the claimants have signed privacy waivers. The claimants are:

Claimant B: Empire United Lines
Claimant D: Ross Trading
Claimant F: Central Asia Seed Company (CASC)
Claimant H: Chevron/Texaco
Claimant J: Dow AgroSciences
Claimant K: Troy BioSciences Inc.
Claimant L: SD&G International Inc.
Claimant M: Vergest Ltd. and JV Uzbek Xerox Systems
Claimant N: Black & Veatch
Claimant O: ABB Lummus
Claimant P: Radio-Page, Joint Ventyre

Claimant Q: NCI Projects International
Claimant R: ROMAK
Claimant S: Newmont Mining, Joint Ventyre
Claimant T: Coscom, Joint Venture

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